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**STATE OF WISCONSIN  
Division of Hearings and Appeals**

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In the Matter of

[REDACTED]  
[REDACTED]  
[REDACTED]

DECISION

CWA/149229

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**PRELIMINARY RECITALS**

Pursuant to a petition filed May 03, 2013, under Wis. Admin. Code § HA 3.03, to review a decision by the Bureau of Long-Term Support in regard to Medical Assistance, a hearing was held on June 18, 2013, at Waukesha, Wisconsin.

The issue for determination is whether Petitioner's IRIS eligibility was correctly discontinued because Petitioner no longer meets the nursing home functional screen eligibility requirement.

There appeared at that time and place the following persons:

**PARTIES IN INTEREST:**

Petitioner:

[REDACTED]  
[REDACTED]  
[REDACTED]

Respondent:

Department of Health Services  
1 West Wilson Street  
Madison, Wisconsin 53703

By: Jill Speer and Andrea Loasby on behalf of the  
Bureau of Long-Term Support  
1 West Wilson  
Madison, WI

**ADMINISTRATIVE LAW JUDGE:**

David D. Fleming  
Division of Hearings and Appeals

**FINDINGS OF FACT**

1. Petitioner is a resident of Waukesha County. He has been a participant in the IRIS program.
2. Petitioner filed his appeal to contest the discontinuance of his IRIS eligibility.
3. Petitioner is 22 years of age ([REDACTED]/1990) and lives in the community with his family.

4. Petitioner was born with a transposition of the great arteries of his heart. He had corrective surgery and then developed a superior vena cava obstruction from a clot in a central line. He was in a coma for three days. As a result of a lack of oxygen to the brain he is diagnosed with developmental and cognitive delays.
5. Petitioner is independent as to bathing, dressing, mobility, transfers, eating, and toileting. He does not take any medications. He is able to prepare simple meals. He is able to make change for small transactions. He does work at the YMCA and a family owned restaurant. He is able to do the laundry though he needs reminders. He does not drive. He can use a telephone.

## **DISCUSSION**

Petitioner is a participant in the IRIS (Include, Respect, I Self-Direct) program. The Medicaid Eligibility Handbook (MEH) describes the IRIS program:

### **37.1.1 Introduction**

The Include, Respect I Self-Direct ([\*IRIS\*](#)) program is a fee for service alternative to Family Care, PACE or Partnership for individuals requesting a long-term care support program in Family Care counties.

Under IRIS, the participant will be able to access services comparable to those provided under the Home- and Community-Based Waivers (HCBW) while managing an individual budget to meet their service needs.

...

### **37.1.3 IRIS Eligibility**

The IRIS option is available to people living in Family Care counties when they come to the [\*ADRC\*](#) and are found in need of publicly-funded long term care services. It is also available to Family Care members (and Partnership members, if Partnership is also operated in the county) if the [\*member\*](#) requests to change to IRIS. (Such individuals would need to be disenrolled from their [\*managed care\*](#) long-term support program in order to participate in IRIS).

Individuals who wish to participate in IRIS must meet the following criteria in order to qualify:

- Reside in a county operating Family Care,
- Have a nursing home level of care as determined by the LTC Functional Screen, **and**
- All Medicaid Home- and Community-Based waiver financial and non-financial eligibility criteria

*MEH, §§37.1.1 and 37.1.3.*

..

### **37.1.1 Introduction**

The Include, Respect I Self-Direct (IRIS) program is a fee for service alternative to Family Care, PACE or Partnership for individuals requesting a long-term care support program in Family Care counties.

Under IRIS, the participant will be able to access services comparable to those provided under the Home- and Community-Based Waivers (HCBW) while managing an individual budget to meet their service needs.

...

### **37.1.3 IRIS Eligibility**

The IRIS option is available to people living in Family Care counties when they come to the ADRC Aging and Disability Resource Center. and are found in need of publicly-funded long

term care services. It is also available to Family Care members (and Partnership members, if Partnership is also operated in the county) if the member A recipient of Medicaid; formerly referred to as a "client." requests to change to IRIS. (Such individuals would need to be disenrolled from their managed care long-term support program in order to participate in IRIS).

Individuals who wish to participate in IRIS must meet the following criteria in order to qualify:

- Reside in a county operating Family Care,
- Have a nursing home level of care as determined by the LTC Functional Screen, and
- All Medicaid Home- and Community-Based waiver financial and non-financial eligibility criteria

As of January 1, 2008 the levels of care for waiver programs are:

1. Nursing Home (formerly Comprehensive NH)
  2. Non-Nursing Home (formerly Intermediate and Comprehensive non-NH)
- See the MEH, §29.4.*

I note here that the waiver programs use the terms “nursing home” and “non-nursing home” levels of care as well as ‘comprehensive’ and ‘intermediate’ levels of care. Nonetheless the terms mean the same thing - comprehensive is nursing home level of care and intermediate is non-nursing home.

Comprehensive functional capacity is defined at *Wis. Admin. Code, §DHS 10.33(2)(c)*:

(c) Comprehensive functional capacity level. A person is functionally eligible at the comprehensive level if the person requires ongoing care, assistance or supervision from another person, as is evidenced by any of the following findings from application of the functional screening:

1. The person cannot safely or appropriately perform 3 or more activities of daily living.
2. The person cannot safely or appropriately perform 2 or more ADLs and one or more instrumental activities of daily living.
3. The person cannot safely or appropriately perform 5 or more IADLs.
4. The person cannot safely or appropriately perform one or more ADL and 3 or more IADLs and has cognitive impairment.
5. The person cannot safely or appropriately perform 4 or more IADLs and has cognitive impairment.
6. The person has a complicating condition that limits the person's ability to independently meet his or her needs as evidenced by meeting both of the following conditions:
  - a. The person requires frequent medical or social intervention to safely maintain an acceptable health or developmental status; or requires frequent changes in service due to intermittent or unpredictable changes in his or her condition; or requires a range of medical or social interventions due to a multiplicity of conditions.
  - b. The person has a developmental disability that requires specialized services; or has impaired cognition exhibited by memory deficits or disorientation to person, place or time; or has impaired decision making ability exhibited by wandering, physical abuse of self or others, self neglect or resistance to needed care.

Intermediate functional capacity is defined at *Wis. Admin. Code, §DHS 10.33(2)(d)*:

d) Intermediate functional capacity level. A person is functionally eligible at the intermediate level if the person is at risk of losing his or her independence or functional capacity unless he or she receives assistance from others, as is evidenced by a finding from application of the functional screening that the person needs assistance to safely or appropriately perform either of the following:

1. One or more ADL.
2. One or more of the following critical IADLs:
  - a. Management of medications and treatments.
  - b. Meal preparation and nutrition.
  - c. Money management.

A person's long term care needs and the level of care are determined by use of the Long Term Care Functional Screen. The Long Term Care Functional Screen (LTC FS) is a functional needs assessment describing assistance needed with:

- **Activities of Daily Living** (ADL's-bathing, dressing, mobility, transfers, eating, toileting)
- **Instrumental Activities of Daily Living** (IADL's-meal preparation, medication management, money management, telephone, transportation, and employment)
- **Health Related Tasks** (including skilled nursing)
- **Diagnoses**
- **Behavioral Symptoms and Cognition**

The LTC FS also includes information on risk factors, mental health and substance abuse, and where the person would like to live. *Source: Wisconsin Department of Health Services, online, Adult Long-Term Care Functional Screen, Module #1: Overview of the Long Term Care Functional Screen (LTC FS), §1.1 History.* (<http://dhs.wisconsin.gov/ltcare/FunctionalScreen/instructions.htm>).

The evidence indicates that Petitioner is independent in his activities of daily living (again, bathing, dressing, mobility, transfers, eating, toileting) thus to be found functionally eligible at the nursing home/comprehensive level of care he must be unable to safely perform 5 IADLs or 4 IADLs and be cognitively impaired. Again, the IADLs are meal preparation, medication management, money management, telephone, transportation, and employment. Petitioner can use the phone, prepare simple meals, make change for small transactions, does work - albeit with benevolent employers - and does not take medications. He does not, therefore, meet the nursing home/comprehensive level of care.

### **CONCLUSIONS OF LAW**

That the agency correctly discontinued Petitioner's IRIS eligibility as he does not meet nursing level of care functional eligibility standards.

**THEREFORE, it is**

**ORDERED**

That this appeal is dismissed.

### **REQUEST FOR A REHEARING**

This is a final administrative decision. If you think this decision is based on a serious mistake in the facts or the law, you may request a rehearing. You may also ask for a rehearing if you have found new evidence which would change the decision. Your request must explain what mistake the Administrative

Law Judge made and why it is important or you must describe your new evidence and tell why you did not have it at your first hearing. If you do not explain these things, your request will have to be denied.

To ask for a rehearing, send a written request to the Division of Hearings and Appeals, P.O. Box 7875, Madison, WI 53707-7875. Send a copy of your request to the other people named in this decision as "PARTIES IN INTEREST." Your request for a rehearing must be received no later than 20 days after the date of the decision. Late requests cannot be granted.

The process for asking for a rehearing is in Wis. Stat. § 227.49. A copy of the statutes can be found at your local library or courthouse.

### **APPEAL TO COURT**

You may also appeal this decision to Circuit Court in the county where you live. Appeals must be served and filed with the appropriate court no more than 30 days after the date of this hearing decision (or 30 days after a denial of rehearing, if you ask for one).

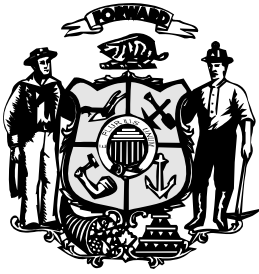
For purposes of appeal to circuit court, the Respondent in this matter is the Department of Health Services. After filing the appeal with the appropriate court, it must be served on the Secretary of that Department, either personally or by certified mail. The address of the Department is: 1 West Wilson Street, Madison, Wisconsin 53703. A copy should also be sent to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400.

The appeal must also be served on the other "PARTIES IN INTEREST" named in this decision. The process for appeals to the Circuit Court is in Wis. Stat. §§ 227.52 and 227.53.

Given under my hand at the City of Milwaukee,  
Wisconsin, this 1st day of 2013

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\sDavid D. Fleming  
Administrative Law Judge  
Division of Hearings and Appeals



**State of Wisconsin\DIVISION OF HEARINGS AND APPEALS**

Wayne J. Wiedenhoeft, Acting Administrator  
Suite 201  
5005 University Avenue  
Madison, WI 53705-5400

Telephone: (608) 266-3096  
FAX: (608) 264-9885  
email: [DHAmail@wisconsin.gov](mailto:DHAmail@wisconsin.gov)  
Internet: <http://dha.state.wi.us>

The preceding decision was sent to the following parties on August 1, 2013.

Bureau of Long-Term Support